

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TONY B. GASKINS, ET AL.,)	
Plaintiffs,)	
)	
v.)	C.A. 05-11230-JLT
)	
KATHLEEN DENNEHY, ET AL.,)	
Defendants.)	

FURTHER MEMORANDUM AND ORDER
AND NOTICE TO PRISON OF ASSESSED FILING FEE

TAURO, D.J.

For the reasons set forth below: (1) Plaintiffs Robert Brown and Joseph Irizarry are DISMISSED from this action as plaintiffs; (2) The applications to proceed *in forma pauperis* (Motion ## 6-17, and #40) filed by Mac Hudson, Orrin Simmons, Jeffrey Hardy, Prince Moses, Derick Tyler, Michael Keohane, Hakarya Bush, Steve Jacobbe, Samuel Correa, Trevor Higgins, and Carl Odware are allowed and the filing fee is assessed as set forth in Schedule "A" attached; (3) Plaintiffs' Motion for Hearings/Pre-trial Conferences (Motion ## 23, 25, 27, 30, 32) are denied without prejudice pending resolution of the *pro bono* counsel issues; and (4) Plaintiffs' Motion for a Temporary Restraining Order (#18) is denied without prejudice to renew after service has been made on the defendants and a response filed; and (5) the Court will deem any pleading/motion filed by one Plaintiff in the future to be joined in by all Plaintiffs, unless a Plaintiff advises he wishes to "opt-out" with respect to a particular pleading.

I. The Filing Fee; Dismissal of Non-Complying Plaintiffs

On June 16, 2005, this Court entered a Memorandum and Order (#5) with respect to the filing fee issues presented by this multiple-Plaintiff civil action. That Memorandum and Order directed the Plaintiffs to either pay the filing fee, or to submit completed *in forma pauperis*

applications accompanied by their prison account statements, within forty-two (42) days. It further directed the Treasurer's Office at MCI Cedar Junction to provide the requested account information in order for this Court to assess and apportion the \$250.00 filing fee, pursuant to 28 U.S.C. § 1915(b).

To date, the Court has received the requisite applications to proceed *in forma pauperis* from 12 of the 14 Plaintiffs, including Mac Hudson, Orrin Simmons, Jeffrey Hardy, Prince Moses, Derick Tyler, Michael Keohane, Hakarya Bush, Steve Jacobbe, Samuel Correa, Trevor Higgins, and Carl Odware. The Court has not received complying applications from Plaintiffs Robert Brown or Joseph Irizarry.

Accordingly, for failure to comply with this Court's directive with respect to the filing fee, it is hereby ORDERED that Plaintiffs Robert Brown and Joseph Irizarry are DISMISSED from this action as plaintiffs.

It is FURTHER ORDERED that the applications to proceed *in forma pauperis* filed by Plaintiffs Mac Hudson, Orrin Simmons, Jeffrey Hardy, Prince Moses, Derick Tyler, Michael Keohane, Hakarya Bush, Steve Jacobbe, Samuel Correa, Trevor Higgins, and Carl Odware, are allowed. The Court previously allowed Plaintiff Tony Gaskins's application, but deferred on the assessment of the filing fee pending resolution of the apportionment issues.

Accordingly, each of the above named Plaintiffs is assessed a filing fee pursuant to 28 U.S.C. § 1915(b) as set forth in the attached Schedule "A" incorporated herein by reference. This Memorandum and Order shall serve as Notice to the Treasurer's Office and to any Treasurer's Office at facilities to which these inmates named herein may be transferred, of the filing fee to be collected.

II. Other Pending Motions

It is FURTHER ORDERED that Plaintiffs' Motions for Hearing/Pretrial Conference are denied without prejudice, pending resolution of the appointment of *pro bono* counsel issues. If and when *pro bono* counsel is appointed in accordance with this Court's prior allowance of the request for counsel (Order, #34, entered July 28, 2005), the Court will hold a hearing as necessary. Plaintiffs' Motion for Temporary Restraining Order is denied without prejudice to renew after service of process on the defendants and a response is filed.

The Court notes that summonses have previously issued on June 24, 2005, however, no proof of service has yet been filed. While the Court has directed the United States Marshal's Office to serve the defendants as directed by the Plaintiffs, with all costs to be borne by the United States Marshal, it is the Plaintiffs' responsibility to ensure that service of process is made on the defendants.

III. Filings by One Plaintiff Shall Be Applicable to All Plaintiffs

In order to assist Plaintiffs in economizing their efforts, and to avoid duplicative multiple filings for relief by each individual Plaintiff in this action by streamlining the filings to effectively utilize the Court's resources in maintaining the docket of this action, it is hereby ORDERED that this Court will deem any pleading/motion filed by one Plaintiff to be joined in by all Plaintiffs, unless a Plaintiff timely advises he wishes to "opt-out" with respect to that pleading. Therefore, to the extent possible, the Plaintiffs are directed to coordinate future pleadings with each other, in order to file one comprehensive document, which shall be delineated as "Joint" filing (*e.g.*, "Joint Motion" or "Joint Statement"). Any Plaintiff who does not wish to join in on such filing, may include a statement indicating a wish to "opt-out" of the

filing.

CONCLUSION

For the reasons stated above, it is hereby ORDERED:

1. Plaintiffs Robert Brown and Joseph Irizarry are DISMISSED from this action as plaintiffs;
2. The applications to proceed *in forma pauperis* (Motion ## 6-17, and #40) filed by Mac Hudson, Orrin Simmons, Jeffrey Hardy, Prince Moses, Derick Tyler, Michael Keohane, Hakarya Bush, Steve Jacobbe, Samuel Correa, Trevor Higgins, and Carl Odware are allowed;
3. The civil action filing fee is assessed as to Plaintiffs Tony B. Gaskins, Mac Hudson, Orrin Simmons, Jeffrey Hardy, Prince Moses, Derick Tyler, Michael Keohane, Hakarya Bush, Steve Jacobbe, Samuel Correa, Trevor Higgins, and Carl Odware as set forth in the attached Schedule "A";
4. The Plaintiffs' Motion for Hearings/Pre-trial Conferences (Motion ## ##23, 25, 27, 30, 32) are denied without prejudice pending resolution of the *pro bono* counsel issues;
5. Plaintiffs' Motion for a Temporary Restraining Order (#18) is denied without prejudice to renew after service has been made on the defendants and a response filed.
6. The Court will deem any pleading/motion filed by one Plaintiff to be joined in by all Plaintiffs, unless a Plaintiff advises he wishes to "opt-out" with respect to a particular pleading.

/s/ Joseph L. Tauro

Dated: 8/3/05

JOSEPH L. TAURO

UNITED STATES DISTRICT JUDGE

SCHEDULE "A"

<u>Name</u>	<u>Prisoner #</u>	<u>Initial Filing Fee</u> (Assessed Pursuant to 28 U.S.C. § 1915(b)(1))	<u>Balance Due:</u> The remainder of the fee is to be assessed in accordance with 28 U.S.C. § 1915(b)(2).
Tony B. Gaskins	W 52145	\$11.69	\$9.14
Mac Hudson	W 48494	\$20.83	----*
Orrin Simmons	W 64291	\$20.83	----*
Jeffrey Hardy	W 57408	\$8.42	\$12.41
Prince Moses	W 64524	\$10.44	\$10.39
Derick Tyler	W 48332	\$20.83	----*
Michael Keohane	W 67741	\$20.83	----*
Zakariya Bush	W 57052	\$7.55	\$13.28
Samuel Correa	W 66636	\$20.83	----*
Trevor Higgins	W 62661	\$20.83	----*
Carl Odware	W 61996	\$20.83	----*
Steven Jacobbe	W 81729	\$0.00 **	\$20.83 **

* Each Plaintiff is assessed a total filing fee in Civil Action No. 05-11230-JLT, of **\$20.83**.¹ The Plaintiff's initial assessment of the filing fee pursuant to 28 U.S.C. § 1915(b)(2) has been adjusted in Column 3 above, based on an apportioned fee amongst all Plaintiffs. Accordingly, the initial assessment appearing in Column 3 has been reduced to reflect the total amount of the assessed fee owed by the Plaintiff. Upon payment of the amount in Column 3, no further payment obligation is required.

**Plaintiff has proffered evidence of being without funds for six months and being currently without funds. Under 28 U.S.C. § 1915(b)(2), plaintiff is assessed an obligation to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account each time it exceeds \$10.00 towards the payment of the \$250.00 filing fee.

¹Because the Court is unable to equally apportion the \$250.00 filing fee amongst the Plaintiffs, the filing fee assessed totals \$249.96. The Court waives the remainder of the fee of \$.04.